IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1718 OF 2007

Sanjay Bhagwan Rawate ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

WITH

WRIT PETITION NO.1719 OF 2007

Santosh Bhagwan Rawate ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

WITH

WRIT PETITION NO.1720 OF 2007

Sunil Bhagwan Rawate ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.S.M. Kulkarni with Mr.G.P. Lasure for the Petitioner.

Mr.P.M. Patil, AGP for Respondent Nos.1 and 2.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 2ND APRIL, 2007.

ORAL ORDER : (PER R.M. SAVANT, J.)

1. The learned counsel for the Petitioner seeks deletion of Respondent No.3 from Writ Petition No.1720 of 2007. Name of Respondent No.3 is accordingly

deleted at the risk of the said Petitioner.

2. Rule with the consent of the parties made returnable forthwith and heard finally.

3. The above three Petitions have been filed by three brothers being Sanjay Bhagwan Rawate, Santosh Bhagwan Rawate and Sunil Bhagwan Rawate. The Petitions have been filed impugning the common order dated 1.12.2006, passed by Respondent No.3 - Scrutiny Committee by which order, the Petitioners' claim as belonging to Mahadeo Koli, Scheduled Tribe was rejected. Since the documentary evidence and the information of the Petitioners regarding the traits, characteristics etc./ are common, the said Petitions are dealt with together and disposed of as such for convenience sake.

4. The facts necessary to be cited are related to Writ Petition No.1720 of 2006 which the learned counsel for the Petitioners requested for being treated as the lead matter.

5. The Petitioner in Writ Petition No.1720 of 2007 - Sunil Bhagwan Rawate and other Petitioners being Sanjay Bhagwan Rawate and Santosh Bhagwan Rawate

had filed their claims before the Scrutiny Committee for verification some time in the year 2004 as belonging to Mahadeo Koli, Scheduled Tribe. In the meanwhile, the elections to the Panvel Municipal Council were declared on 19.11.2006. Ward No.30 of the said Municipal Council was reserved for S.T. candidate. It appears that no candidate was available belonging to S.T. from the said ward and therefore, the Petitioner abovenamed - Sunil Bhagwan Rawate though belonging to other ward, filed his nomination from the said ward. The Petitioner was declared elected unopposed. It is the case of the Petitioner that except Sunil Bhagwan Rawate, no other Petitioners i.e. Sanjay Bhagwan Rawate and Santosh Bhagwan Rawate have taken any benefits on the basis of the caste certificate as belonging to Mahadeo Koli.

6. The Petitioners had filed various documents like school leaving certificates, 7/12 extracts, relating to their relations from the paternal side evidencing the fact that they belong to Mahadeo Koli. The Petitioners had also filed validity certificates of their real cousins from the paternal side as well as maternal side. The Petitioners also relied upon the tribe claim, of real paternal brother, son of paternal aunt and real maternal brother’s sister,

whose claim has been held valid.

7. As per the procedure, the enquiry through vigilance cell was undertaken by the Committee and it was said that the Petitioners had rightly given the information about the Gods, Goddess worshiped by Mahadeo Koli's. It is the case of the Petitioners that the Research Officer with the vigilance cell has expressed his satisfaction about the information provided by the Petitioners. The Committee thereafter proceeded to decide the tribe claim of the Petitioners and vide the impugned order dated 1.12.2006 has invalidated the tribe claim of the Petitioners.

8. We have heard the learned for the respective parties. On behalf of the Petitioners Mr.S.M. Kulkarni learned counsel submitted that in the teeth of the caste validity certificates issued to the relations of the Petitioners from the maternal and paternal side, all the Petitioners had substantiated their caste claim. It was further submitted by the learned counsel for the Petitioners that the vigilance cell had also observed in favour of the Petitioners. It is only on the basis of one entry in respect of the Petitioners' father, wherein the case was mentioned as Koli that tribe claim of the Petitioners has been

rejected.

9. On behalf of Respondent Nos.1 and 2, it has been contended that on consideration of the documents as well as the report of the vigilance cell, the Committee has rightly come to a conclusion that the Petitioners do not belong to Mahadeo Koli, Scheduled Tribe.

10. We have gone through the impugned order dated 1.12.2006 passed by the Scrutiny Committee. We have also gone through the vigilance cell report. It is undisputed that the Petitioners have produced as many as five validity certificates, wherein the caste claim of the Petitioners' near relations as belonging to Mahadeo Koli has been validated. We have also gone through the genealogy produced by the Petitioners from which we have seen that the validity certificates are in respect of the Petitioners' cousins from paternal side. The Petitioners have also produced the validity certificates of the cousins from the maternal side. The Committee while dealing with the said issue has merely observed that the case of each applicant has to stand on its own feet and thereafter ventured to examine the case of the Petitioners on the said basis. In our opinion the said approach of the Committee was

not proper. The Committee should have taken into consideration the said Tribe validity certificates and thereafter observed as to why the said certificates cannot be accepted in support of the Petitioners' tribe claims.

11. Another aspect to be noted is that the Committee has also not considered the vigilance cell report in its proper perspective. The Committee has merely relied upon the said first entry as recorded in the Petitioner's father, wherein the case is mentioned as Koli. In the teeth of plethora of the validity certificates issued to the Petitioners' near relations from maternal as well as paternal side, reliance upon the Committee on said sole entry in our view is not proper.

12. The Petitioners have also relied upon 7/12 extract in respect of one Vaibhav Madhukar Rawate. It has been noted in 7/12 extract that the land has been returned as it is belonging to Adiwasi. The Committee has also not adverted to the said document and therefore has not dealt with the same.

The Committee while dealing with the validity certificates obtained by the Petitioners' real

relations has merely observed that the same have not been obtained by following the procedure by law. If the Committee did not wish to accept the said certificates, reasons germane to the issue of considering the tribe claim of the Petitioners held to be given.

13. In that view of the matter, the impugned order dated 1.12.2006 would have to be set aside and the matter would have to be relegated back to Respondent No.2 - Committee for a decision afresh after giving due consideration to the caste validity certificates produced by the Petitioners in respect of the real relations from paternal and maternal side as also after giving due consideration to the documentary evidence produced by the Petitioners as well as the vigilance cell report.

14. Since the Petitioner in Writ Petition No.1720 of 2007 i.e. Sunil Bhagwan Rawate has been disqualified as a councillor on the ground of invalidation of his caste certificate and since this Court vide order dated 12.3.2007 in Writ Petition No.1720 of 2007 granted ad-interim reliefs in terms of prayer clauses (c) and (b), the said relief is continued with a clarification that Respondent Nos.1

and 2 would not notify the vacancy till Respondent No.3 decides the case of the Petitioners de-novo as directed hereinabove.

The Respondent No.3 to decide the claims afresh within a period of four months from today on its own merits and uninfluenced by the observations made in this order. Rule is made accordingly absolute in all the Writ Petitions to the aforesaid extent with parties to bear their own cost.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)